DEL MONTE FOODS

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April 19, 2007

DEPARTMENT OF ECOLOGY
APR 23 2007
WATER QUALITY PROGRAM

Mr. Jim LaSpina
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

SUBJECT: Washington State Department of Ecology Revised Industrial Stormwater General Permit

Dear Mr. LaSpina:

Del Monte Corporation (Del Monte) has reviewed the Department of Ecology (DOE) "Revised Industrial Stormwater General Permit" (hereinafter referred to as "ISWGP") issued for public comment on February 7, 2007.

We appreciate DOE's efforts to try to meet all interested party needs in the drafting of ISWGP. Furthermore, we thank you for allowing us to participate in the stormwater perspectives' meeting that was held on April 11, 2007.

We think some good information was exchanged at the perspectives' meeting. And, after listening to all at the meeting, it was apparent to us that many challenges face all of us in this next permit cycle, particularly given the fact that many of the metals now being detected in stormwater appear to be ubiquitous in the environment, and that the current tools in our tool boxes may not be adequate to quickly and cheaply bring many discharges into compliance with benchmarks.

Our comments on the ISWGP are provided below for your consideration. For ease of review, our comments are presented as general and permit specific comments. We hope that you find our comments constructive and helpful.

GENERAL COMMENTS

Re-Think Tighter Benchmarks

The currently proposed benchmarks and corrective actions in the ISWGP are most concerning to us, and we are distressed that even tighter benchmarks are proposed, without first conducting more appropriate scientific evaluations, fully understanding the limitations of existing treatment technologies, estimating the economic impact of alternative practices, and involving more experts and stakeholders to fully justify the tighter benchmarks.

Essential Benchmark Working Group

The benchmarks and the corrective actions are the core of the permit and need to be reasonable from not only a regulatory perspective, but also from a technical, cost benefit, and social standpoint. Because so much is at stake with respect to benchmarks, a working group (representing key state industries, government, academia, and other stakeholders) should be charged with development of appropriate, scientifically, sound changes to the existing safeguard procedures related to the management of industrial stormwater. It is paramount that any new benchmarks be science-based, facts-driven, and not based on worst-case scenarios.

Essential Additional Public Input

We strongly urge the DOE to re-evaluate the benchmarks and corrective actions in the ISWGP and not rush to re-issue the ISWGP until all stakeholder and scientific perspectives have been more carefully analyzed particularly given that there is no immanent threat to the health of the public or the environment because of existing industrial stormwater discharges. This fact is well supported by the data presented in the mandated 2006 "Evaluation of Washington's Industrial Stormwater General Permit." If anything, the public comment period for the ISWGP should be extended and more feedback sought from stakeholders.

Continuation of External Advisory Committee

Although no one from our firm directly served on the "External Advisory Committee," these types of committees are very useful for industry to interact with DOE. We hope that the "External Advisory Committee" will continue to meet after the ISWGP is issued so that pollution prevention successes as well as compliance challenges can be constructively shared with DOE on an on-going basis.

Further Pollutant Surveys and Studies

It is important that DOE continue to work with industry on storm water pollutant surveys and studies similar to the "Survey of Zinc Concentrations in Industrial Stormwater Runoff[1]" completed in 2006. As this survey demonstrated, controlling zinc in many stormwater discharges is going to be a challenge for industry given that this metal is commonly found in tires, hydraulic fluids, and building materials. We will support DOE in these efforts as well as in gaining any available state/federal grant monies to support these efforts. If we have any hope of achieving the copper and zinc discharge benchmarks, we all need to start thinking outside the black-box because most industrial stormwater dischargers have little, if any control, over the raw materials used in the manufacture of common building materials, hydraulic fluids, tires, etc., that appear to be predominately fouling our stormwater discharges and likely can not be corrected without implementing expensive treatment technologies.

[1] DOE. 2006. A Survey of Zinc Concentrations in Industrial Stormwater Runoff.

Update of 6415 Report

The 6415 Report "Evaluation of Washington's Industrial General Permit[2]" should be updated every two years (definitely before the next five year permit cycle) so that we can all accurately gauge ongoing statewide efforts to "clean-up" industrial stormwater discharges. Balanced and well-written reports of this nature provide data for developing science-based and facts-driven statewide stormwater pollution prevention policies and procedures (allows policies to be developed without reliance on unfounded suppositions and worst-case scenarios).

More Consideration Given to Recommendations Provided in the 6415 Report

DOE should dissect the 6415 Report again and consider incorporating more of the recommendations provided in the 6415 Report in the ISWGP. Recommendations in the report that we support include:

- Replace turbidity samplings with TSS and replace BOD samplings with COD
- Elimination of oil and grease and pH monitoring requirements
- Include dissolved metal analysis as Level 3 Response Requirements (or sooner if the permittee so chooses)
- Use of median benchmark values for assessing on-going quality compliance (eliminate monitoring for the rest of the permit if the median value for a parameter is at or below the benchmark through two monitoring seasons)
- Bi-annual reporting of monitoring data (distinct site assessment and corrective action periods)
- Response (Levels 1, 2, and 3) requirements (particularly the response time lines)
- Feedback and reporting (DOE should develop a list of alternative [zinc free] products or after-market fixes [e.g., roof sealants or paints] that are appropriate for use on existing facilities or products especially given the fact that over 50% of all industrial stormwater discharges do not meet the zinc benchmark)

USEPA Draft MSGP and NOAA Fisheries Service Letter

Both the USEPA draft MSGP as well as the NOAA Fisheries Service letter cited as the basis for revising the copper benchmark in the ISWGP Fact Sheet should have been posted on the DOE website along with the Draft ISWGP and 6415 Report at the beginning of the comment period for the Revised ISWGP. We state this because these two documents are continually referred to as a basis for not only revising the copper benchmark, but also many other permit requirements. With respect to the Draft version of the MSGP cited in the Fact Sheet, based on our contact with USEPA, the USEPA is still making changes to the MSGP. If anything, utilizing this permit for setting new benchmarks in the ISWGP is premature. Further, the NOAA Fisheries Service letter pertains to the MSGP developed for the entire nation and findings in the letter may or may not be reflective of current water quality conditions in the State of Washington. Therefore, sole use of this letter as a basis for tightening the ISWGP copper benchmark is somewhat arbitrary.

[2] EnviroVision and Herrera Environmental Consultants. 2006. Evaluation of Washington's Industrial Stormwater General Permit.

Stormwater Pollution Prevention Training

The DOE should closely consider offering voluntary stormwater pollution prevention training for all ISWGP operators as recommended in the 6415 Report. This training would likely significantly reverse the less than stellar compliance record at industry facilities as reported in the ISWGP fact sheet. This training would also likely result in better sampling at sites and in turn provide the DOE with better data for assessing the real health of statewide water quality for setting state specific stormwater benchmarks.

PERMIT SPECIFIC COMMENTS

Condition S1F2c

This condition states that to be eligible for a conditional no exposure certificate, stormwater flow from the facility shall not contain significant levels of pollutants from impervious surfaces including zinc or copper from roof surfaces.

Comment

Does this condition mean that all facilities applying for a "no exposure certificate" will be expected to sample and test roof drainage and other impervious facility drainage to certify that no discharges in fact contain "significant levels of pollutants" before gaining a certificate? If so, this requirement is unreasonable. If all facility industrial activities and materials handling are being done under cover, it should be assumed that facility stormwater discharges will not cause or contribute to a violation of applicable water quality standards unless verified otherwise by DOE inspection. Further, the DOE should encourage industry to complete manufacturing activities under cover where practical, and permit conditions should be written to support such measures.

Condition S2A3ci

This condition states that all new facilities must apply for coverage at least 180 days before the commencement of stormwater discharge from the facility.

Comment

This condition is unreasonably restrictive for receiving coverage under a general permit and is overly restrictive when compared to the United States Environmental Protection Agency (USEPA) "Stormwater Multi-Sector General Permit for Industrial Activities" as well as most other state stormwater general permits. If a new facility submits an application for coverage 60 days before the commencement of stormwater discharges, the DOE should have more than enough time to act on the application given *SEPA* and public notice requirements will have already been completed. Further, this condition as written is in conflict with Conditions S2A4 and S2D1 of the permit.

Condition S2B2c

This condition states that all permittees must implement BMPs that require capital investment within nine months of receiving coverage.

Comment

This condition is unreasonable for most capital projects. Capital projects are typically developed on an annual basis by most businesses, and for publicly traded businesses must be approved at the highest levels. Further, bids (at least three bids) and design work are typically required for most capital projects. All of these activities can take a considerable amount of time. Accordingly, we request that this condition be modified to indicate that capital BMPs must be completed within one-year (not nine-months) of receiving coverage.

Condition S3A4e

This condition states that the permittee must provide a copy, or access to a copy, of the SWPPP to the public, if requested in writing to do so.

Comment

This condition should be removed from the permit. It should be the primary responsibility of the DOE to respond to public requests for review and reproduction of facility stormwater pollution prevention plans, monitoring data, etc., which are routinely submitted to DOE. In regard to our seasonally operated plants in Washington, these plants are not staffed to quickly accommodate direct citizen requests for information. Further, security is a major concern at all of our food processing plants nationwide. We believe that the permit fees paid to DOE should adequately cover this historic state responsibility.

Conditions S3B37, S3B37ii1, and SB37iii3

These conditions refer to "Volumes" of the Eastern Washington SWMM in several places.

Comment

All references to "Volumes" of the Eastern Washington SWMM should be changed to "Chapters." The Eastern SWMM consists of "Chapters" while the Western Washington SWMM consists of "Volumes." This change will likely eliminate any confusion.

Condition S4B1a

This condition states that the permittee must collect at <u>least</u> four stormwater samples during the period from October 1 to June 30.

Comment

It is not unreasonable to assume that rainfall and site conditions may not allow a permittee to collect at least four stormwater samples each year (especially for Eastern Washington). Therefore, this condition should be expanded to read "The permittee shall sample the discharge from each designated location at least four times during the period from October 1 to June 30 unless rainfall and/or site conditions do not allow. If rainfall and/or site conditions do not allow the permittee to collect all required samples, the permittee shall submit a written explanation with the monitoring report explaining why."

Condition S4C2a

This condition states that the permittee may suspend sampling for one or more parameters based on consistent attainment of benchmark values when eight consecutive samples in which the reported value for the listed parameter, other than for pH, is equal to or less than the benchmark value.

Comment

This condition is overly restrictive when compared to the USEPA 2006 proposed "Stormwater Multi-Sector General Permit for Industrial Activities[3]" that allows permittees to suspend all sampling for the permit term following four quarters of benckmark monitoring, if the average of the four monitoring values does not exceed the benchmark. If anything, this condition should be rewritten to indicate that the permittee may suspend sampling for one or more listed benchmark parameters when the median of eight consecutive samples is equal to or less than the benchmark value, other than for pH. We suggest that the median of values be used here based on findings presented in the 6415 Report (Section 5 of 6415 Report). Among other things, this approach recognizes the highly variable nature of stormwater data and will not burden permittees with endless samplings for the permit term when a problem very likely does exist at the facility and/or water quality is not being compromised.

Condition S4C2c

This condition indicates that dischargers to 303(d)-listed water bodies may suspend stormwater quality samplings when eight consecutive samples fail to detect the presence of the listed parameter.

Comment

This condition is overly restrictive and without basis. If the median quality of a facility's storm water quality meets a defined benchmark, the facility should be able to suspend samplings as non-303(d) discharges are allowed. From our perspective, the risks to water quality are equal for non-303(d) and 303(d) industrial dischargers in the context of a general permit unless there is

[3] USEPA. 2006. Proposed Reissuance of National Pollutant Discharge Elimination System (NPDES) Stormwater Multi-Sector General Permit for Industrial Activities.

some compelling data that suggests otherwise. Specifically, this rule may unduly burden an industry simply because of its location, and not based on the actual risk that it may pose to a particular watershed. Clearly, in those watersheds where it is determined that industrial stormwater discharges are a major cause for 303(d) listing, it is not unreasonable to require more samplings.

Condition S5, Table 2

This table includes benchmarks, action levels, and sampling requirements applicable to discharges to non-303(d) listed water bodies.

Comment

First, turbidity should be removed from the table and be replaced with total suspended solids (TSS) as recommended in the 6415 Report (Section 5 of 6415 Report). Note that turbidity testing is not a proposed sampling parameter in the USEPA 2006 "Stormwater Multi-Sector General Permit for Industrial Activities." Further, the NOAA[4] agrees with USEPA's proposed use of TSS in the Multi-Sector Permit (Page 15 of NOAA letter). TSS is a relatively inexpensive parameter to measure and considered by USEPA as a reasonable indicator of stormwater discharge quality and whether BMPs need attention (Page 15 of NOAA letter).

Second, oils & grease and pH should also be removed from this table as recommended by the 6415 Report unless the DOE has a good basis for continuing this monitoring. Per the 6415 Report, only a relatively small number of state-wide stormwater quality samples (<15 percent) exceeded the applicable benchmark for pH (Page 31 of 6415 Report). Likewise, only 7 percent of statewide samples for oils & grease exceeded the benchmark (Page 31 of 6415 Report). Furthermore, oils and grease concentrations in the majority of the samples were below applicable detection limits (Page 31 of 6415 Report). In practice, oils & grease problems are more appropriately addressed by visual assessments; by the time the laboratory results are available, the event causing the problem will likely have ended (Page 32 of 6415 Report).

Third, copper and zinc benchmark/action levels in the current ISWGP should be carried forward in this five year permit cycle (i.e., the existing ISWGP copper and zinc benchmark/action levels should remain unchanged or be completely removed from the ISWGP until additional data is gathered in regard to these metals at industrial sites as well as in other state stormwater discharges). We do not believe that the NOAA letter cited in the fact sheet for the permit should serve as the sole basis for tightening copper and zinc benchmark/action levels without first considering state-specific water quality data, consulting more experts in the field, and allowing more public debate. Further, the 6415 Report concludes "that the existing benchmarks, if attained, are fairly protective for zinc and less protective but reasonable under most scenarios for copper" (Page 20 of 6415 Report). Since so much is at stake with respect to these benchmarks, we believe that <u>much more</u> discussion and analysis is needed before these benchmarks are changed. And, this is particularly true in that we are now just beginning to find out that these

[4] NOAA. 2006. NOAA Letter to James A. Hanlon, Director Office of Wastewater, USEPA

metals are ubiquitous in the environment and not necessarily due to specific industrial activities, poor implementation of BMPs, and/or industry negligence.

Last, the table should also be amended to give dischargers the option of sampling/testing for either total or dissolved copper and zinc to demonstrate compliance with benchmark/action levels given acute water quality standards for metals in WAC 173-201A are generally expressed in terms of dissolved metals (Page 45 of 6415 Report). As shown in the 2006 DOE report "A Survey of Zinc Concentrations in Industrial Stormwater Runoff," the dissolved fraction of zinc in industrial stormwater in many cases can be quite lower (on a concentration basis) than the total faction (total recoverable fraction concentration). These types of metal relationships in stormwater really need to be fully understood for setting good stormwater policy as we move forward into the next permit cycle because as the ISWGP is currently structured more than 50% of industrial discharges currently do not meet the existing zinc benchmark. If things progress along the current regulatory path, a significant number of facilities will likely be forced to apply for individual NPDES permits which could be overwhelming to industry and DOE.

Condition S5, Table 3

This table includes benchmarks, action levels, and sampling requirements applicable to specific industries including "Food and Kindred Products."

Comment

BOD testing for "Food and Kindred Products" should be removed from the table and be replaced with COD as suggested in the 6415 Report (Section 5 of 6415 Report). Further, we are very confused why the BOD benchmarks for "Food and Kindred Products" are so much more stringent than "Effluent Limitations Applicable to Non-Hazardous Waste Landfills" (see effluent limitations for non-hazardous waste landfills on page 32 of ISWGP). BOD is BOD whether discharged from a landfill or food processing plant shipping dock. The basis for this regulatory discrepancy is requested to be documented.

Condition S6C4a

This condition requires all "Food and Kindred Producers" that discharge to 303(d)-listed water bodies to sample discharges for fecal coliform and comply with applicable benchmarks and action levels for this parameter.

Comment

This condition is arbitrary given that not all "Food and Kindred Producers" have a *reasonable potential* to cause or contribute to violation of fecal coliform standards. Accordingly, this condition needs to be rewritten to only focus on those "Food and Kindred Producers" that actually have *reasonable potential* to discharge fecal coliforms. Note that fecal coliform testing is not being required of any "Food and Kindred Producers" in the USEPA 2006 proposed "Stormwater Multi-Sector General Permit for Industrial Activities." Further, the permit fact sheet states "sampling for fecal coliform will not be required of all stormwater dischargers to waters

impaired for this pollutant. Permittees that document that there is no source of fecal coliform from their industrial activities will not be required to sample for it. This documentation must include all potential industrial sources including the presence of animals as part of the industrial activity (e.g., guard dogs)." However, for some reason, this language does not also appear in the draft permit (which is perhaps an over-site).

Condition S7E

This condition refers to reports of non-compliance and includes a typo.

Comment

Condition S9.E at the end of this condition should really be Condition S9.D. Note that there is no Condition S9.E.

Condition S8

This condition describes corrective actions (Levels 1, 2, 3, and 4) that need to be taken by the permittee for when stormwater quality does not meet defined benchmark and action levels.

Comment

The current adaptive corrective actions as written are among other things: 1) overly restrictive; 2) fail to account for the inherit difficulties in sampling stormwater; and 3) most importantly do not provide the time needed for ISWGP operators to systematically make site changes and to validate the effects of these changes on stormwater quality before having to implement costly treatment that may or may not work in the end (particularly in the case of achieving very low metals concentrations in stormwater discharges).

For the above reasons, we generally support the alternative corrective action approach in the 6415 Report. Among other things, the 6415 approach is more pragmatic than the current corrective action approach. Specifically, we support modifying the current corrective actions to incorporate the following core 6415 recommendations:

- Use of median benchmark values for assessing on-going quality compliance (eliminate monitoring for the rest of the permit if the median value for a parameter is at or below the benchmark through two monitoring seasons)
- Bi-annual reporting of monitoring data (distinct site assessment and corrective action periods)
- Response criteria (if the annual median pollutant value is above the benchmark a level 1, 2, or 3 response would apply).
- Response (Levels 1, 2, and 3) requirements (particularly the response timelines)

With regard to the requirement that Capital BMPs should be implemented in as little as six months (Current Level 2), this condition will unduly burden businesses particularly if the capital needs to be spent in the middle of a budget cycle in that capital budgets are typically developed

on an annual basis by most businesses -- both small and large (i.e., projects are identified at the beginning of the yearly budget cycle and are completed by year end of the cycle). Except in those rare cases where an immanent threat to the health of the public or environment exists, the deadline for completing Capital BMPs for purposes of this general permit should be in 12 months.

If overwhelming support is received by DOE to retain the current corrective action approach in the ISWGP and disregard the alternative 6415 Report corrective action approach, we request that you consider the following changes to the current Level 2 and 3 verbiage to somewhat correct the shortfalls in the permit language as we detailed in our introductory comment paragraph.

Level One Corrective Action
No comments.

Level 2 Corrective Actions (Page 42-43 of ISWGP)
After September 30, 2007, if any ~~two~~ ***four*** ... shall:

1. Within ~~seven~~ ***30*** days ... methods.

2. No changes.

3. Within ~~45~~ ***60*** days ... above.

4. Within ~~six~~ ***12*** months ... identified in subsection 2 above***, if applicable.***

5. No changes.

6. No changes.

7. Within ~~60~~ ***90*** days ... Ecology.

Level Three Corrective Actions (Page 43-44 of ISWGP)
For samples taken after December 31, 2004, if: any ~~four~~ ***six*** samples ... sample;

OR

~~two~~ ***three*** samples exceed ... Action;

No further changes.

Level Four Corrective Actions (Page 44-45 of ISWGP)
Following completion of Level Three Corrective Actions, if any ~~two~~ ~~(2)~~ ***three (3)*** ... shall:

No further changes.

Condition G14

This condition relates to upsets and includes a typo (Page 54 of ISWGP).

Comment

Condition S5.F referred to in this condition should really be Condition S9.D. Note that there is no Condition S5.F.

Condition G25A4c

This condition refers relates to bypass and includes a typo (Page 57 of ISWGP).

Comment

Condition S9.E. referenced in this condition should really be Condition S9.D.

Appendix 2 -Definitions

Special Condition S11 in the Notice of Termination (NOT) definition should be "Special Condition S13."

We appreciate your consideration of our views and urge you not to rush into issuing a revised ISWGP. Further, we urge you to consider extending the public comment period for the permit particularly if it is your intention to tighten benchmarks. If you have any questions, please do not hesitate to contact me at tim.ruby@delmonte.com or at (925) 944-7318.

Sincerely,

DEL MONTE CORPORATION

Timothy P. Ruby

Timothy P. Ruby
Environmental Water Manager

c: Mike Fuerst, Del Monte – Yakima
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